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HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (C) NO. 3209 of 2007

Petitioner — Kedar Nath S/o. Mukunda, R/o. Village Tendumuda, Tahsil – Pendra Road, Distt. – Bilaspur (C.G.)

Versus

Respondents

1. Chain Singh, S/o. Daya Singh, Caste-Gond, R/o. Village Rajhaprra (Korba), Tahsil – Pendra Road, Distt. – Bilaspur (C.G.)
2. State of Chhattisgarh, Through : Collector, Bilaspur (C.G.)
3. Revenue Board of Chhattisgarh, Distt. – Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

Single Bench :- Hon'ble Shri Justice **Satish K. Agnihotri**

Present :- Shri D.R. Sharma, Senior Advocate with Ms. Anita Singh, Advocate for the Petitioner.

ORDER
(Passed on this 11th day of June, 2007)

1. The only question raised in this petition is asto whether a tribal who was declared to be an aboriginal tribe under sub-section (6) of Section 165 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code, 1959') can challenge the sale deed of the disputed land in favour of the petitioner after a period of two years. All the facts are admitted.

2. Learned counsel appearing for the petitioner contends that the application dated 28.11.2001 made by the respondent No. 1 with regard to the sale deed dated 28.7.1976 in favour of the petitioner was not maintainable under the provisions of Section 170-B of the Code, 1959. The dismissal of the revision by the Board of Revenue, Chhattisgarh, Bilaspur was bad as the Board of Revenue has not considered the jurisdiction of the Sub-Divisional Officer (Revenue),

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Pendra Road about maintainability of the application after a period of two years under the provisions of Section 170-B of the Code, 1959.

3. Sub-section (1) of Section 170-B of the Code, 1959 contemplates that a person who is in possession of the agricultural land which belonged to a member of a tribe, which has been declared to be an aboriginal tribe, shall within two years of such commencement, notify all the information asto how he has come in possession of such land to the Sub-Divisional Officer in such form and in such manner as may be prescribed. Sub-section (2) of Section 170-B of the Code, 1959 contemplates that if such person fails to notify the information as required by sub-section (1) within the specified period, it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and such land shall on the expiration of the period would revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

4. The petitioner is an alleged purchaser from the respondent No. 1, thus, the liability is on the petitioner to notify all the information within a period of two years, failing which the same would be declared as unlawful possession.

5. The petitioner, it appears, has not notified his possession and the Sub-Divisional Officer took the action on the basis of the application made by the respondent No. 1 who happens to be a tribe declared to be an aboriginal tribe.

6. It is beneficial to quote the provisions of Section 170-B of the Code, 1959 which reads as under:-

> **"[170-B. Reversion of land of members of aboriginal tribe which was transferred by fraud.**-(1) Every person who

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on the date of commencement of the Chhattisgarh Land Revenue Code (Amendment) Act. 1980 (hereinafter referred to as the Amendment Act of 1980) is in possession of agricultural land which belonged to a member of a tribe which has been declared to be an aboriginal tribe under sub-section (6) of section 165 between the period commending on the 2nd October, 1959 and ending on the date of the commencement of Amendment Act, 1980 shall, within [two years] of such commencement, notify to the Sub-Divisional Officer in such form and in such manner as may be prescribed, all the information as to how he has come in possession of such land.

(2) if any person fails to notify the information as required by sub-section (1) within the period specified therein it shall be presumed that such person has been in possession of the agricultural land without any lawful authority and the agricultural land shall, on the expiration of the period aforesaid revert to the person to whom it originally belonged and if that person be dead, to his legal heirs.

[1][2-A) If a Gram Sabha in the Scheduled area referred to in clause (1) of Article 244 of the Constitution finds that any person, other than a member of an aboriginal tribe, is in possession of any land of a Bhumiswami belonging to an aboriginal tribe, without any lawful authority, it shall restore the possession of such land to that persons to whom it originally belonged and if that person is dead to his legal heirs:

Provided that if the Gram Sabha fails to restore the possession of such land, it shall refer the matter to the Sub-Divisional Officer, who shall restore the possession of such land within three months from the date of receipt of the reference.]

(3) On receipt of the information under sub-section (1), the Sub-Divisional Officer shall make such enquiry as may be deemed necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and pass an order revesting the agricultural land in the transferer and, if he is dead, in his legal heirs.]

[1][(3) On receipt of the information under sub-section (1) the Sub-Divisional Officer shall make such enquiry as may

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necessary about all such transactions of transfer and if he finds that the member of aboriginal tribe has been defrauded of his legitimate right he shall declare the transaction null and void and-

(a) Where no building or structure has been erected on the agricultural land prior to such finds pass an order revesting the agricultural land in the transferer and if he be dead, in his legal heirs,

(b) Where any building or structure has been erected on the agricultural land prior to such finding, he shall fix the price of such land in accordance with the principles laid down for fixation of price of land in the Land Acquisition Act, 1894 (No. 1 of 1894) and order the person referred to in sub-section (1) to pay to the transferer the difference, if any, between the price so fixed and the price actually paid to the transferer:

Provided that where the building or structure has been erected after the 1st day of January, 1984 the provisions of clause (b) above shall not apply:

Provided further that fixation of price under clause (b) shall be with reference to the price on the date of registration of the case before the Sub-Divisonal Officer.]"

7. I have heard learned counsel appearing for the petitioner, perused the pleadings and documents appended thereto. I have not found any infirmity, illegality or jurisdictional error in the order. Contention of learned counsel appearing for the petitioner that the application was not maintainable before the Sub-Divisional Officer is rejected in view of unambiguous and clear provisions of law (supra). The impugned order is unexceptionable and does not warrant any interference.

8. Thus, the writ petition is dismissed summarily.

Sd/-
Satish K. Agnihotri
Judge

B/